

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAZMIN YADIRA MITCHELL,

Case No. 3:23-cv-00655-ART-CLB

Plaintiff,

ORDER

v.

LELAND DUDECK, Acting
Commissioner of Social Security,¹

Defendant.

Plaintiff Yazmin Yadira Mitchell appeals the Commissioner’s denial of her application for Title II Social Security Disability Benefits. Before the Court is Mitchell’s motion to remand (ECF No. 11) and Magistrate Judge Carla Baldwin’s report and recommendation (“R&R”) (ECF No. 16). The R&R recommends that the Court deny Mitchell’s motion for remand and affirm the Commissioner’s decision. For the reasons identified below, the Court adopts the R&R in part and rejects it in part, and grants the motion to remand.

I. BACKGROUND

A. Procedural History

The following relevant facts are taken from the R&R. (ECF No. 16 at 5–6.) Mitchell filed an application for disability benefits in 2018, alleging a disability on set date of February 2, 2018. (AR 21, 61, 77.) The Social Security Administration denied her application initially and upon reconsideration in 2019. (AR 60 -121.) After an administrative hearing in 2020, the administrative law judge (“ALJ”) found that Mitchell was not disabled. (AR 21–31.) Mitchell appealed that decision, and the parties stipulated to voluntary remand. (AR 1455–69.) After a second

¹ Leland Dudeck, the current Acting Commissioner of Social Security, is substituted as defendant pursuant to Federal Rule of Civil Procedure 25(d).

1 hearing in 2023, a different ALJ found that Mitchell was not disabled because
2 she could perform past relevant work. (AR 1356–81.) Mitchell appealed that
3 decision to this Court.

4 **B. ALJ Decision**

5 In its October 2023 decision, the ALJ determined that Mitchell was not
6 disabled. (AR 1365–81.) At step one of the five-step disability evaluation process,
7 the ALJ found that Mitchell had not engaged in substantial gainful activity since
8 February 2, 2018, the alleged onset date. (AR 1368.) At step two, the ALJ
9 concluded that Mitchell had the following four severe impairments: lumbar
10 degenerative disc disease post surgery, peripheral neuropathy of lower extremity,
11 hypertension, and asthma. (*Id.*) The ALJ concluded that Mitchell’s other reported
12 impairments—major depressive disorder and generalized anxiety disorder—were
13 not severe. (AR 1368–69.) At step three, the ALJ determined that Mitchell did not
14 have an impairment or combination of impairments that meets or medically
15 equals the severity of one of the listed impairments. (AR 1369–70.)

16 Next, the ALJ considered medical opinions and other evidence to determine
17 Mitchell’s residual functional capacity (“RFC”). The ALJ found that Mitchell had
18 the RFC to perform sedentary work as defined in 20 C.F.R. § 404.1567(a) with
19 the following limitations:

20 [T]he claimant can walk 1 hour in an 8-hour day and 1 block at a time. The
21 claimant can stand 1 hour in an 8-hour day. The claimant can sit 6 to 8
22 hours in an 8-hour workday and she needs to stand for 1 to 2 minutes
23 after every 30 minutes to stretch. The claimant can occasionally climb
24 ramps and stairs; occasionally balance, stoop, kneel, crouch and crawl;
and never climb ladders, ropes, or scaffolds. The claimant can tolerate
frequent temperature extremes, frequent pulmonary irritants, and frequent
hazards, but have no exposure to vibration.

25 (AR 1370.) Based on this finding, the ALJ found that Mitchell could perform her
26 past relevant work as an administrative assistance and human resources clerk.
27 (AR 1379–80.)
28

1 **II. LEGAL STANDARD**

2 **A. Disability Evaluation Process**

3 ALJs apply a five-step evaluation process to determine whether a claimant
 4 qualifies as disabled. *Garrison v. Colvin*, 759 F.3d 995, 1010 (9th Cir. 2014). The
 5 five-step inquiry addresses the following questions: “(1) whether the claimant
 6 presently works in substantial gainful activity; (2) whether the claimant’s
 7 impairment, or a combination of impairments, qualifies as severe; (3) whether the
 8 impairment, or combination of impairments, equals an impairment listed in the
 9 regulations; (4) whether the claimant’s residual functional capacity allows her to
 10 perform her past relevant work; and (5) whether significant numbers of jobs exist
 11 in the national economy that the claimant can perform.” *Popa v. Berryhill*, 872
 12 F.3d 901, 905–06 (9th Cir. 2017); *see* 20 C.F.R. § 404.1520(a)(4).

13 **B. Standard of Review**

14 The Court “may accept, reject, or modify, in whole or in part, the findings
 15 or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where
 16 a party timely objects to a magistrate judge’s report and recommendation, then
 17 the court is required to “make a *de novo* determination of those portions of the
 18 [report and recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1).
 19 A court is not required to conduct “any review at all . . . of any issue that is not
 20 the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

21 A reviewing court must affirm the Commissioner’s decision if it is
 22 “supported by substantial evidence, and if the Commissioner applied the correct
 23 legal standards.” *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th
 24 Cir. 2004). Substantial evidence is “more than a mere scintilla but less than a
 25 preponderance; it is such relevant evidence as a reasonable mind might accept
 26 as adequate to support a conclusion.” *Hill v. Astrue*, 698 F.3d 1153, 1159 (9th
 27 Cir. 2012) (citation omitted). The court considers the evidence in its entirety,
 28 weighing both the evidence that supports and that detracts from the ALJ’s

1 conclusion.” *Luther v. Berryhill*, 891 F.3d 872, 875 (9th Cir. 2018). “When the
2 evidence before the ALJ is subject to more than one rational interpretation, we
3 must defer to the ALJ’s conclusion.” *Batson*, 359 F.3d at 1198. However, the
4 court may only consider the reasons provided by the ALJ in the disability
5 determination and “may not affirm the ALJ on a ground upon which he did not
6 rely.” *Garrison*, 759 F.3d at 1010.

7 **III. DISCUSSION**

8 In her motion to remand, Mitchell argues that the ALJ: (1) improperly
9 evaluated the medical opinion of Rebecca Goodspeed, PA-C in making the RFC
10 determination; (2) improperly found Mitchell’s mental impairments to be non-
11 severe at step two and failed to account for her mental functioning in the RFC;
12 and (3) improperly evaluated Mitchell’s subjective complaints in the RFC. (ECF
13 No. 11.) The R&R found that: (1) the ALJ properly evaluated the medical of
14 Rebecca Goodspeed; (2) the ALJ properly evaluated Mitchell’s mental
15 impairments; and (3) the ALJ properly evaluated Mitchell’s subjective complaints.
16 (ECF No. 16.)

17 Mitchell objects only to the R&R’s finding on the first issue: whether the
18 ALJ properly evaluated the medical opinion of Rebecca Goodspeed. (ECF No. 17.)
19 The Court reviews that portion of the R&R *de novo*. Because Mitchell does not
20 object to the other two findings of the R&R, the Court adopts those.

21 **A. Whether the ALJ Properly Evaluated Rebecca Goodspeed’s Medical** 22 **Opinion**

23 Mitchell contends that the ALJ’s RFC determination is not supported by
24 substantial evidence and is the product of legal error because the ALJ improperly
25 evaluated the medical opinion of Rebecca Goodspeed, PA-C. (ECF No. 11 at 7–
26 11.) She argues that, despite finding some limitations articulated in Goodspeed’s
27 opinion to be persuasive, the ALJ did not incorporate those limitations in the RFC
28 or provide a reason for doing so. (*Id.*)

1 RFC is “what [one] can still do despite [one’s] limitations.” *Garrison*, 759 at 1011;
2 20 C.F.R. § 416.945(a)(1). RFC is “based on all the relevant evidence in [the] case
3 record.” 20 C.F.R. § 416.945. “The ALJ is responsible for translating and
4 incorporating clinical findings into a succinct RFC.” *Rounds v. Comm’r Soc. Sec.*
5 *Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015). The “most important factors” in
6 assessing medical opinions are supportability and consistency. 20 C.F.R. §
7 404.1520c(b)(2).

8 “[A]n ALJ cannot reject an examining or treating doctor’s opinion as
9 unsupported or inconsistent without providing an explanation supported by
10 substantial evidence.” *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022). The
11 ALJ must “articulate . . . how persuasive” it finds “all of the medical opinions”
12 from each doctor or other source, and “explain how [it] considered the
13 supportability and consistency factors” in reaching these findings. *Id.* (citing 20
14 C.F.R. § 404.1520c(b)). “Supportability means the extent to which a medical
15 source supports the medical opinion by explaining the ‘relevant . . . objective
16 medical evidence.’” *Woods*, 32 F.4th at 791–92 (citing 20 C.F.R. § 404.1520c(c)(1)).
17 “Consistency means the extent to which a medical opinion is ‘consistent . . . with
18 the evidence from other medical sources and nonmedical sources in the claim.’
19 *Woods*, 32 F.4th at 792 (citing 20 C.F.R. § 404.1520c(c)(2)).

20 Here, the ALJ found some portions of Goodspeed’s opinion persuasive and
21 other portions not persuasive. The ALJ considered Goodspeed’s opinion as
22 follows:

23 PA Goodspeed found mild limitation in feeling on the right foot, and
24 moderate limitation for sitting, standing, walking, lifting, carrying and
25 bending (19F/10). Additionally, she found the claimant can stand and walk
26 less than 2 hours, sit 6 hours, occasionally lift and carry 10 pounds,
27 frequently lift and carry 10 pounds, does not need to alternate sitting and
28 standing, never stoop, occasionally climb ramps and stairs, occasionally
balance, frequently kneel, crouch and crawl (19F/12). *The mild to moderate
limitations are not persuasive because they are too vague. The other
limitations are persuasive because they are supported by the examination.*

1 PA Goodspeed measured the claimant's specific abilities and found that
2 decreased strength and sensation of the right foot warranted the standing
3 and walking limitation. She also observed that the claimant was able to
4 squat and rise with ease and go from sitting to standing and on and off the
5 table without assistance and without difficulty. In addition to being
6 supported by Dr. Goodspeed's examination, the other limitations are
7 generally consistent with the overall record including exam signs at Dr.
8 Song's office and at Sweetwater [Pain and Spine Center] (e.g., 43F/50;
9 53F/5).

10 (AR 1377–78 (emphasis in original).)

11 The ALJ found that the “other limitations,” including, as relevant here, the
12 limitations of “never stoop[ing]” and “stand[ing] and walk[ing] less than 2 hours”
13 were persuasive. (*Id.*) In doing so, the ALJ explained that these “other limitations”
14 were “supported by Dr. Goodspeed’s examination” and “generally consistent with
15 the overall record.” (*Id.* at 1378.)

16 Despite finding these “other limitations” persuasive, the ALJ did not
17 incorporate all of them into the RFC. Mitchell argues that the ALJ erred by not
18 incorporating two specific restrictions into the RFC: Goodspeed’s opinion that
19 Mitchell can “stand and walk less than 2 hours” and her opinion that Mitchell
20 can “never stoop.” (ECF No. 11 at 8–9.) The commissioner argues that the ALJ
21 “incorporated nearly all of PA Goodspeed’s restrictions” and even assessed a more
22 restrictive RFC in some respects. (ECF No. 14 at 17.) The R&R found that the
23 RFC’s divergence from Goodspeed’s recommendation in its finding that Mitchell
24 could “occasionally stoop” was supported by substantial evidence and that all
25 other limitations in the RFC were either the same or more restrictive than
26 Goodspeed’s findings. (ECF No. 16 at 11.)

27 The RFC’s limitation of “occasionally stooping” constitutes an implicit
28 rejection of Goodspeed’s opinion that Mitchell can “never stoop.” That limitation
was among the “other limitations” which the ALJ found persuasive and the ALJ
did not identify any reasons to discount Goodspeed’s opinion on this issue. (AR
1377–78.) The ALJ erred in implicitly rejecting that opinion without providing an

1 explanation supported by substantial evidence. *See, e.g., Durr v. Saul*, No.
2 218CV01907APGNJK, 2020 WL 625308, at *5 (D. Nev. Jan. 24, 2020), *report and*
3 *recommendation adopted*, No. 218CV01907APGNJK, 2020 WL 620655 (D. Nev.
4 Feb. 10, 2020) (finding error where the ALJ gave significant weight to a medical
5 opinion but implicitly rejected that opinion’s finding that plaintiff could carry out
6 only one-and two-step instructions by failing to include it in the RFC); *Striet v.*
7 *Berryhill*, No. 317CV00673MMDWGC, 2019 WL 386227, at *8 (D. Nev. Jan. 11,
8 2019), *report and recommendation adopted*, No. 317CV00673MMDWGC, 2019
9 WL 383996 (D. Nev. Jan. 30, 2019) (same); *Brown v. Comm’r of Soc. Sec. Admin.*,
10 No. CV-21-01259-PHX-DLR, 2022 WL 17090408, at *2 (D. Ariz. Nov. 21, 2022)
11 (finding error where the ALJ found persuasive and incorporated “nearly all” of a
12 doctor’s opinions about plaintiff’s limitations into the RFC but did not include a
13 limitation on bathroom breaks or provide a reason for doing so).

14 Mitchell argues that the RFC also implicitly rejects Goodspeed’s limitations
15 on standing and walking. (ECF No. 17 at 2–3.) The commissioner argues that the
16 RFC is in fact more restrictive than Goodspeed’s limitation. (ECF No. 18 at 5.)
17 The RFC allows for “walk[ing] 1 hour in an 8-hour day” and “stand[ing] 1 hour in
18 an 8-hour day.” (AR 1370.) Goodspeed’s opinion, which the ALJ found
19 persuasive, stated that Mitchell could “stand and walk less than 2 hours.” (AR
20 1377, 832.) Because the language of both Goodspeed’s opinion and the RFC is
21 ambiguous, it is not clear whether the ALJ also rejected Goodspeed’s opinion on
22 this issue or found it persuasive and adopted a more restrictive RFC. If the RFC
23 is less restrictive than the Goodspeed’s opinion, that may also constitute legal
24 error. *See Jamie B. v. O’Malley*, No. 23-CV-01141-JLB, 2024 WL 1056023, at *6
25 (S.D. Cal. Mar. 11, 2024) (finding legal error where the RFC, which allowed for
26 standing and walking “no more than 2 hours per day,” deviated from a doctor’s
27 opinion that the plaintiff could only stand or walk “*less than* two hours in a
28 workday” without explanation).

1 The commissioner argues that the ALJ diverged from Goodspeed's
2 limitations because the ALJ found other medical opinions persuasive, including
3 that of Dr. Beverly Yamour. (ECF Nos. 14 at 18; 18 at 3–4.) The ALJ's decision
4 explains that it found Dr. Yamour's opinion, including her testimony that Mitchell
5 can "occasionally bend and stoop" to be persuasive because it was supported by
6 Mitchell's treatment history and consistent with evidence in the record. (AR
7 1378.) But the ALJ did not assert that Dr. Yamour's opinion was more persuasive
8 than Goodspeed's or otherwise provide explanation for rejecting Goodspeed's
9 limitations.

10 Although the ALJ's decision to reject Goodspeed's limitations may be
11 supported by substantial evidence, including Dr. Yamour's opinion, the Court is
12 "constrained to review the reasons the ALJ asserts." *Connett v. Barnhart*, 340
13 F.3d 871, 874 (9th Cir. 2003). An ALJ's decision must be reviewed "based on the
14 reasoning and factual findings offered by the ALJ—not post hoc rationalizations
15 that attempt to intuit what the adjudicator may have been thinking." *Bray v.*
16 *Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1225 (9th Cir. 2009). The ALJ's failure
17 to assert any reasons for rejecting Goodspeed's limitations on stooping
18 constitutes legal error.

19 **B. Whether the error was harmless**

20 "A decision of the ALJ will not be reversed for errors that are harmless."
21 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). An error that is
22 "inconsequential to the ultimate nondisability determination" is harmless.
23 *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008) (citing
24 *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006)). "If a
25 vocational expert's hypothetical does not reflect all the claimant's limitations,
26 then the 'expert's testimony has no evidentiary value to support a finding that
27 the claimant can perform jobs in the national economy.'" *Matthews v. Shalala*, 10
28 F.3d 678, 681 (9th Cir. 1993) (citing *DeLorme v. Sullivan*, 924 F.2d 841, 850 (9th

1 Cir. 1991)).

2 Here, none of the vocational expert's hypotheticals reflected a limitation of
3 no stooping. In fact, the hearing transcript suggests that the ALJ did not give the
4 vocational expert a limitation of occasional stooping, despite Mitchell's testimony
5 that when she stoops, her "nerves are crushed in [her] back, and then [her] right
6 leg misfires, and [she] end[s] up falling." (AR 1409, 1420–23.) Mitchell explained
7 during the hearing that her prior work involved "constant bending and stooping,"
8 which would cause her to become stiff and constantly fall. (AR 1409.)

9 Mitchell has also presented evidence suggesting that a limitation of no
10 stooping could impact the findings at steps four and five. Social security guidance
11 explains that "[a]n ability to stoop occasionally; i.e., from very little up to one-
12 third of the time, is required in most unskilled sedentary occupations" and "[a]
13 *complete* inability to stoop would significantly erode the unskilled sedentary
14 occupational base and a finding that the individual is disabled would usually
15 apply[.]" SSR 96–9P (S.S.A. July 2, 1996). Because the ALJ's legal error was not
16 inconsequential to the ultimate nondisability determination, the Court finds that
17 remand is appropriate.

18 It is less obvious that the deviation from Goodspeed's opinion on standing
19 and walking—if there was a deviation—constitutes harmful legal error. However,
20 the Court agrees with Mitchell that the ALJ's failure to clearly state walking and
21 standing limitations in the RFC results in a material ambiguity which should be
22 resolved on remand.

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1 **IV. CONCLUSION**

2 It is therefore ordered Judge Baldwin's Report and Recommendation (ECF
3 No. 16) is adopted in part and rejected in part.

4 It is further ordered that Mitchell's motion to remand (ECF No. 11) is
5 GRANTED.

6 This matter is remanded to the Social Security Administration for further
7 proceedings consistent with this order.

8 The Clerk of the Court is directed to enter judgment and close this case.

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10 DATED: March 26, 2025

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14 ANNE R. TRAUM
15 UNITED STATES DISTRICT JUDGE
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